THE HONOURABLE SRI JUSTICE V.ESWARAIAH

WRIT PETITION No :4612 of 2006

DATED:04-06-2007

BETWEEN:

Kammari Krishna Murthy.

.....
PETITIONER

AND

The Director General of Police,
Government of A.P.,
Hyderabad & another.

.....RESPONDENTS

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ORDER:

Heard learned counsel appearing for the petitioner as well as the learned Government Pleader for Home appearing for the respondents.

2. Petitioner seeks a writ of mandamus declaring the action of the respondents in not entrusting the investigation to the CBCID into the death of the wife of the petitioner, as illegal, arbitrary.

3. It is the case of the petitioner that he is residing at Srisailam and doing carpentry work, and on 06-03-2004 one B.Narasimhulu and his henchmen attacked him and his family members with regard to the drain water issue and in the said altercation they pelted stones on him resulting injuries to his head and body and therefore in order to give complaint he went to the police station and at that time the said Narasimhulu and his henchmen attacked his house, poured kerosene on his wife, and set fire, and the said incident was witnessed by the second son of the petitioner, aged 16 years. The II Additional District Munsif, Kurnool recorded the dying declaration of his wife at the Government General hospital, but ignoring the said dying declaration and the statement of the minor son, the Inspector of Police, Srisailam, referred the case as 'false'. It is the further case of the petitioner that the Assistant Sub-Inspector of police in collusion with the accused submitted

false report to the Circle Inspector based on which the Circle Inspector filed a final report stating that the death of the wife of the petitioner is not murder but it was only self-immolation by his wife. It is the further case of the petitioner that there is no material discrepancy in the dying declaration and police cannot decide the merits of the case, but it is for the Court to consider the material available on record and therefore, the petitioner seeks to entrust the matter for investigation to the CBCID.

4. This Court by order, dated 09-03-2006, directed the 1st respondent to depute an Officer not lower in rank than a Superintendent of police or of an equivalent rank to proceed to the I Town Police station, Srisailam, take over the entire record in Cr.No.20 of 2004, and put up a report to the 1st respondent as to whether any final report has been filed by the Inspector of police concerned, whether the investigation has been conducted with discipline and as warranted by the provisions of the Code of Criminal Procedure, and whether the record discloses any negligence or indiscipline in the conduct of the investigation by the investigating authority. Pursuant to the said direction the Director General of Police directed the Superintendent of Police, Kurnool to conduct enquiry and submit a report and the Superintendent of police conducted enquiry and submitted a report, dated 13-03-2006, stating that the investigation was conducted in proper lines and there was no negligence on the part of the investigating officer. The report further discloses that the wife of the petitioner committed suicide and it is not a case of murder as alleged by the

petitioner.

5. The fact remains that as per the dying declaration recorded by the Assistant Superintendent of police the wife of the petitioner disclosed the names of Smt.Narasamma, Ramanjaneyulu and Padma, who said to have poured kerosene by dragging her from the house and set fire and the time of the incident was given as 9.00 a.m., but whereas the dying declaration was recorded at 11.00 a.m., The Head Constable also recorded another dying declaration wherein the names of the said Narasamma, Ramanjaneyulu and Padma was also mentioned and apart from that the names of two other persons Mallikarjuna and Rupadevi were also mentioned and the time of the incident was mentioned as 7.00 a.m., In the dying declaration recorded by the II Additional District Munsif, Kurnool, no exact time was given but the names of the said Narasamma, Ramanjaneyulu, and Padma have been mentioned stating that they have poured kerosene on her and set fire. Thus the deceased reiterated the first statement given to the Assistant Superintendent of police. In the statement recorded by the II Additional District munsif, it is the opinion of the police that a quarrel broke out between the two groups on 06-03-2004 at about 7.00 a.m., and later both the groups approached the police station for lodging complaint and the Station House Officer summoned both the groups after registering the case in Cr.No.18 of 2004 under Section 160 Cr.P.C. and both the groups were booked under Section 160 Cr.P.C. and while enquiry was going on and when all

of them were in the police station, a message was received in the police station stating that the wife of the petitioner sustained burns and when the personnel belonging to the police station were about to visit the spot, the wife of the petitioner along with her daughter and son came to the police station and the police immediately shifted her to the Government Project hospital, Sundipenta and the statement of the deceased was recorded by the Assistant Sub-Inspector of police. It is the opinion of the police that the accused in Cr.No.20 of 2004 was not present at the scene of offence as alleged by the deceased and therefore, in view of the alleged discrepancies the case was closed as 'false' and final report was filed as disposed of as 'false case'.

6. I am of the opinion that when a final report has been filed by the Inspector of police, Srisailam before the Judicial First Class Magistrate, Atmakur and on receipt of such report it is for the Magistrate to consider the said report and he can direct further investigation or if he thinks fit he can proceed to hold preliminary enquiry or otherwise to dispose of the case in the manner prescribed in the Code of Criminal Procedure. Petitioner is also entitled to file a protest application questioning the final report which is referred as 'false'. Therefore, I am of the opinion that there is a remedy available under the Code itself to question the said final report and take appropriate action to initiate the criminal action based on the investigation already made and if any further evidence requires to be adduced it is open for the petitioner to take appropriate legal steps. It is the case of the petitioner that the dying declaration recorded by the Assistant Sub-Inspector of

police and the statement recorded by the
II Additional District Munsif are similar and therefore, the police ought not to have referred the matter as 'false' but ought to have filed a charge sheet to punish the accused.

7. Having regard to the facts and circumstances the final report is required to be considered under
Section 159 Cr.P.C., and appropriate action has to be taken in accordance with law. It is open for the petitioner to file a protest application for prosecution of the accused in accordance with law.

8. Accordingly, the Writ Petition is disposed of. No order as to costs.

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V.ESWARAIAH,J

04th June, 2007.
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